

STATE OF WASHINGTON
Department of Early Learning
REQUEST FOR QUALIFICATIONS AND QUOTATIONS
RFQQ NO. 08-RFQQ-0110

If you download this RFQQ from the Department of Early Learning website located at: del.wa.gov you are responsible for sending your name, address, e-mail address and telephone number to the RFQQ Coordinator in order for your organization to receive any RFQQ amendments.

PROJECT TITLE: Market Rate and Child Care Survey

PROPOSAL DUE DATE: 4:00 PM, April 8, 2008

EXPECTED TIME PERIOD FOR CONTRACT: April 21, 2008 through August 1, 2008

CONSULTANT ELIGIBILITY: This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

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1 INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The purpose of this RFQQ is to complete a Market Rate Survey regarding child care subsidies and to gather and analyze other elements of child care and child care subsidies. Federal Child Care and Development Fund regulations require all states to conduct Market Rate Surveys every two years to ensure rates are adequate and provide access to all children.

1.2 OBJECTIVE

The objective of this RFQQ is to:

- Conduct a phone survey (DEL will provide the contractor with a survey tool prior to the start date of the contract), by county, that captures specific elements of child care such as current rates of child care centers and family child care homes, numbers of slots, numbers of subsidized slots, current vacancy for all age groups, and current vacancy by infants, toddlers, preschoolers and school age as defined by licensing. A large percentage of DEL providers speak Spanish as their primary language. Therefore, the contractor must be able to conduct the survey in Spanish, as well as English.
- Create a report which includes an:
 - Analysis of the data gathered from the Market Rate Survey; and
 - Analysis of the data gathered from the Market Rate Survey in correlation to:
 - DEL's two subsidy policy studies;
 - The Child Care Resource and Referral Early Learning Data Report; and
 - The Joint Legislative Audit and Review Committee requirement that DEL provide suggestions for measures that indicate increased access and affordability for child care.

The AGENCY may award one or more contracts to consultants who submit proposals as a result of this RFQQ.

1.3 MINIMUM QUALIFICATIONS

The Consultant must be licensed to do business in the state of Washington and have demonstrated experience in conducting statewide surveys and reporting the findings.

Bidders, who do not meet these minimum qualifications will be rejected as non-responsive and will not receive further consideration. Any proposal that is rejected as non-responsive will not be evaluated or scored.

1.4 FUNDING

The overall budget for this project shall not exceed \$180,000.

Proposals in excess of \$180,000 will be rejected as non-responsive and will not be evaluated. In the event additional funding becomes available, any contract awarded may be renegotiated to provide for additional related services.

Any contract(s) awarded as a result of this procurement is contingent upon the availability of funding.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract(s) resulting from this RFQQ is tentatively scheduled to begin on or about April 21, 2008 and to end on August 1, 2008. The AGENCY reserves the option at its sole discretion to extend the contract for an additional one-year period.

1.6 DEFINITIONS

Definitions for the purposes of this RFQQ include:

Agency. The Department of Early Learning is the agency of the state of Washington that is issuing this RFQQ.

Consultant. Individual, company, or firm submitting a proposal in order to attain a contract with the AGENCY.

Contractor. Individual or company whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

Proposal. A formal offer submitted in response to this solicitation.

Request for Qualifications and Quotations (RFQQ). Formal procurement document in which services needed are identified and firms are invited to provide their qualifications to provide the services and their hourly rates.

1.7 ADA

The AGENCY complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in Braille or on tape.

2 GENERAL INFORMATION FOR CONSULTANTS

2.1 RFQQ COORDINATOR

The RFQQ Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Consultant and the AGENCY upon receipt of this RFQQ shall be with the RFQQ Coordinator, as follows:

Name	Jacob White
Mailing Address	Department of Early Learning PO Box 40970, Olympia, WA 98504-0970
Street Address	OR Department of Early Learning 649 Woodland Square Loop SE Lacey, WA 98503
Phone Number	360-725-4389
Fax Number	360-413-3482
E-Mail Address	jacob.white@del.wa.gov

Any other communication will be considered unofficial and non-binding on the AGENCY. Consultants are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Consultant.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Qualifications and Quotations	April 1, 2008
Proposals due	April 8, 2008
Evaluate proposals	April 9, 2008
Conduct oral interviews with finalists, if required	April 9, 2008
Announce "Apparent Successful Contractor" and send notification via fax or e-mail to unsuccessful proposers	April 9, 2008
Hold debriefing conferences (if requested)	April 10, 2008
Negotiate contract	April 21, 2008
File contract with OFM	April 8, 2008
Begin contract work	April 21, 2008

The AGENCY reserves the right to revise the above schedule.

2.3 SUBMISSION OF PROPOSALS

Consultants are required to submit four (4) copies of their proposal. Two copies must have original signatures and two copies can have photocopied signatures. The proposal, whether mailed or hand delivered, must arrive at the AGENCY no later than 4 pm local time in Lacey, Washington on **April 4, 2008**.

The proposal is to be sent to the RFQQ Coordinator at the address noted in Section 2.1. The envelope should be clearly marked to the attention of the RFQQ Coordinator.

Consultants mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFQQ Coordinator. Consultants assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using facsimile transmission.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

2.4 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract, if any, resulting from this RFQQ is signed by the AGENCY and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.17.250 to .340, "Public Records."

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to .340 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Consultant is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The AGENCY will consider a Consultant's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon Chapter 42.17 RCW and Chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The Consultant must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

2.5 REVISIONS TO THE RFQQ

In the event it becomes necessary to revise any part of this RFQQ, addenda will be provided to all who receive the RFQQ.

The AGENCY also reserves the right to cancel or to reissue the RFQQ in whole or in part, prior to execution of a contract.

2.6 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360/753-9693 or <http://www.omwbe.wa.gov> to obtain information on certified firms.

2.7 ACCEPTANCE PERIOD

Proposals must provide 60 days for acceptance by AGENCY from the due date for receipt of proposals.

2.8 RESPONSIVENESS

All proposals will be reviewed by the RFQQ Coordinator to determine compliance with administrative requirements and instructions specified in this RFQQ. The Consultant is specifically notified that failure to comply with any part of the RFQQ may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

2.9 MOST FAVORABLE TERMS

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Consultant can propose. The AGENCY does reserve the right to contact a Consultant for clarification of its proposal.

The Consultant should be prepared to accept this RFQQ for incorporation into a contract resulting from this RFQQ. Contract negotiations may incorporate some or the Consultant's entire proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

2.10 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful contractor will be expected to enter into a contract, which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A to this

solicitation. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

2.11 COSTS TO PROPOSE

The AGENCY will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFQQ, in conduct of a presentation, or any other activities related to responding to this RFQQ.

2.12 NO OBLIGATION TO CONTRACT

This RFQQ does not obligate the state of Washington or the AGENCY to contract for services specified herein.

2.13 REJECTION OF PROPOSALS

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFQQ.

2.14 COMMITMENT OF FUNDS

The director of the AGENCY or the director's delegate are the only individuals who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFQQ. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.15 ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

2.16 INSURANCE COVERAGE

The Contractor is to furnish the AGENCY with a certificate of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at Contractor's own expense, obtain and keep in force insurance coverage, which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the AGENCY within fifteen (15) days of the contract effective date.

Liability Insurance

Commercial General Liability Insurance (CGL): Contractor shall maintain general liability insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Employers Liability ("Stop Gap") Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

- **Additional Insured.** The AGENCY, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
- **Cancellation.** The AGENCY shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
- **Identification.** Policy must reference the state's contract number and the agency name.
- **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the AGENCY, the risk manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
- **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the state in this contract.

Workers' Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The state will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3 PROPOSAL CONTENTS

Proposals must be written in English and submitted on eight and one-half by eleven inch (8 ½" x 11") paper with tabs separating the major sections of the proposal. The three major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFQQ)
2. Qualifications
3. Quotation

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

Items in this section marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive, however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFQQ) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the president or executive director of a corporation, the managing partner of a partnership, or the proprietor of a sole proprietorship. Attach the Certifications and Assurances form to the Letter of Submittal.

3.2 QUALIFICATIONS SECTION

The services to be provided under this project are:

1. Develop market rate survey methodology (DEL will provide the contractor with a survey tool prior to the start date of the contract);
2. Conduct a phone survey (in both Spanish and English) by county that captures the elements of the survey tool which includes current rates of child care centers and family child care homes, numbers of slots, numbers of subsidized slots, current vacancy for all age groups, and current vacancy by infants, toddlers, preschoolers and school age as defined by licensing;
3. Prepare a draft report. This report must contain an:
 - a. Analysis of the data gathered from the Market Rate Survey; and
 - b. Analysis of the data gathered from the Market Rate Survey in correlation to:
 - i. DEL's two subsidy policy studies;
 - ii. The Child Care Resource and Referral Early Learning Data Report; and
 - iii. Provide suggestions for measures that indicate increased access and affordability for child care.

4. Prepare a final report, which incorporates DEL's review of the draft report.

The Qualifications Section of the proposal must contain information that will demonstrate to the evaluation committee the Consultant's understanding of the types of services proposed, the firm's ability to accomplish them, and the ability to meet tight timeframes.

The Qualifications Response is to be submitted in three sections as follows: 1) Business Information, 2) Experience and Staffing, and 3) Schedule. The optional fourth section would include proof of certification for minority and women-owned businesses participating on the project.

3.2.1 BUSINESS INFORMATION (MANDATORY)

- A. State the name of the company, address, phone number, fax number, e-mail address, legal status of entity (ownership) and year entity was established as it now substantially exists.
- B. Provide the firm's Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
- C. Indicate how many employees are with the firm. Name the firm principles and their roles.
- D. Identify any state employees or former state employees employed by the Consultant or on the Consultant's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.
- E. If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date.
- F. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either; (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
- G. Submit full details of the terms for default, including the other party's name, address, and phone number. Present the Consultant's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

3.2.2 QUALIFICATIONS

1. EXPERIENCE (SCORED)

- A. Describe services provided by the Consultant that indicate the firm's ability to provide the services described in this RFQQ.

- B. Describe the firm's recent experience with conducting state wide surveys and reporting on their findings.

2. STAFFING (SCORED)

- A. Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors.
- B. Provide the name and a resume' of the person who will be the lead contact for the project. Provide names and resumes' for other staff, which includes information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information.
- C. List any sub-consultants you may want to include to complete your roster of services. Describe what services each would provide. Provide the information in Section 3.2.1 about each.

3. SCHEDULE (SCORED)

Describe the firm's ability to meet deadlines, especially on a short-time frame, and give examples of how past tight deadlines have been successfully met.

4. REFERENCES (MANDATORY)

List names, addresses, telephone numbers, fax numbers and e-mail addresses of three business references for whom work has been accomplished and briefly describe the type of service provided for them. The Consultant must grant permission to the AGENCY to contact the references and others who may have pertinent information. Do not include current AGENCY staff as references. The AGENCY may evaluate references at the AGENCY's discretion.

5. OMWBE CERTIFICATION (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

3.3 QUOTATIONS SECTION

3.3.1 IDENTIFICATION OF COSTS (SCORED)

The Quotations section must list all hourly rates in U.S. dollars for services anticipated under the proposed contract. The hourly rates are to represent fully weighted costs. This includes the hourly rates of staff that would be assigned to the project, administrative costs, local travel costs, or any other applicable fees that would be charged under this contract.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Washington State Office of Minority and Women's Business Enterprises.

Consultants are required to collect and pay Washington State taxes as applicable.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFQQ. Consultants are encouraged, however, to submit proposals which are consistent with state government efforts to conserve state resources.

3.3.2 COMPUTATION

The score for the cost proposal will be computed by dividing the lowest average hourly rate received by the Consultant's average hourly rate. Then the resultant number will be multiplied by the maximum possible points for the cost section.

4 EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team to be designated by the AGENCY, which will determine the ranking of the proposals.

AGENCY, at its sole discretion, may also elect to select the top-scoring firms as finalists for an oral presentation.

4.2 CLARIFICATION OF PROPOSAL

The RFQQ Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

4.3 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Qualifications Section – 60%	60 points
Firm Experience.....35 points (maximum)	
Staff Qualifications.....15 points (maximum)	
Schedule.....10 points (maximum)	
Quotation Section – 40%	<u>40 points</u>
Grand Total	<u>100 Points</u>

4.4 ORAL PRESENTATIONS MAY BE REQUIRED

Oral presentations, if considered necessary by the AGENCY, may be utilized in selecting the winning proposal. The AGENCY, at its sole discretion, may elect to select the top-scoring firm(s) from the written evaluation for an oral presentation and contact the top-scoring firm(s) to schedule a date, time and location for an oral presentation. Commitments made by the Consultant at the oral interview, if any, will be considered binding.

The oral presentation shall determine the Apparently Successful Contractor.

OR

The score from the oral presentation will be added to the written score to determine the Apparently Successful Contractor.

4.5 NOTIFICATION TO PROPOSERS

Firms whose proposals have not been selected for further negotiation or award will be notified by FAX or by e-mail.

4.6 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed/e-mailed to the Consultant. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.7 PROTEST PROCEDURE

This procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFQQ Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFQQ Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator
- Errors in computing the score
- Non-compliance with procedures described in the procurement document or AGENCY policy

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as:

- 1) An evaluator's professional judgment on the quality of a proposal, or,
- 2) AGENCY'S assessment of its own and/or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY director or an employee delegated by the director who was not involved in the procurement, will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant that submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFQQ Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action.
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest.
- Find merit in the protest and provide the AGENCY options which may include:
 - Correct the errors and re-evaluate all proposals
 - Reissue the solicitation document and begin a new process
 - Make other findings and determine other courses of action as appropriate

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5 RFQQ EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Personal Service Contract Format including General Terms and Conditions (GT&Cs)

- **EXHIBIT A**

Certifications and Assurances

1. I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):
2. I/we declare that all answers and statements made in the proposal are true and correct.
3. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
4. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
5. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
6. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
7. Unless otherwise required by law, the prices and/or cost data that have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
8. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
9. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
10. I/we grant the AGENCY the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.


On behalf of the Consultant submitting this proposal, my name below attests to the accuracy of the above statements.

Signature of Proposer

Title

Date

Personal Service Contract Template

 Washington State Department of Early Learning		PERSONAL SERVICE		DEL Contract Number:	
This Contract is between the state of Washington Department of Early Learning (DEL) and the Contractor identified below.					
CONTRACTOR INFORMATION					
NAME			Doing business as (DBA)		
ADDRESS			WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)		
CONTACT		TELEPHONE		FAX	
				E-MAIL ADDRESS	
DEL INFORMATION					
CONTACT NAME AND TITLE			CONTACT ADDRESS 649 Woodland Square Loop SE Lacey, WA 98503 P.O. Box 40970 Olympia, WA 98504-0970		
TELEPHONE		FAX 360-413-3482		E-MAIL ADDRESS	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? <input checked="" type="checkbox"/> No <input type="checkbox"/> YES				If A SUBRECIPIENT - CFDA NUMBER(S)	
CONTRACT STATE FUNDS		CONTRACT FEDERAL FUNDS		CONTRACT MAXIMUM AMOUNT	
CONTRACT START DATE			CONTRACT END DATE		
CONTRACT PURPOSE: The purpose of this contract is to					
The following Exhibits are attached and are incorporated to this Contract by this reference: Statement Of Work And General Terms And Conditions					
The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DEL only upon signature by DEL.					
CONTRACTOR SIGNATURE			PRINTED NAME AND TITLE		DATE SIGNED
DEL SIGNATURE			PRINTED NAME AND TITLE		DATE SIGNED

STATEMENT OF WORK

GENERAL TERMS AND CONDITIONS

TERMS AND CONDITIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by Special Terms and Conditions set forth below, Exhibit A (Statement of Work) and Exhibit B (General Terms and Conditions). Exhibits A and B are attached and incorporated by reference. These terms and conditions govern the work to be performed under this Contract, the nature of the working relationship between Department of Early Learning (DEL) and the CONTRACTOR, and specific obligations of the parties.

2. SPECIAL TERMS AND CONDITIONS

a. *Definitions Specific to Special Terms: The words and phrases listed below, as used in this Contract, shall each have the following definitions:*

b. OFM FILING REQUIREMENT

10-Day Filing

Under the provisions of Chapter 39.29 RCW, this personal service contract is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment made until ten (10) working days following the date of filing, and if required, until approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

c. BILLING PROCEDURES AND PAYMENT

- (1) DEL will pay CONTRACTOR upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Department of Early Learning, Attn: Fiscal Office, P.O. Box 40970, Olympia, WA 98504-0970.
- (2) Payment shall be considered timely if made by the DEL within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.
- (3) DEL may, in its sole discretion, terminate the Contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this Contract.

- (4) No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by DEL.

d. INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this Contract. The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

- (4) *The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give DEL thirty (30) calendar days advance notice of any insurance cancellation.*

CONTRACTOR shall submit to DEL within fifteen (15) calendar days of the Contract effective date, a certificate of insurance that outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the Contract.

e. ASSURANCES

DEL and the CONTRACTOR agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

f. ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this Contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations;
- Special Terms and Conditions as contained in this basic Contract instrument;
- Exhibit A – General Terms and Conditions;
- Exhibit B – Statement of Work; and
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

g. ENTIRE AGREEMENT

This Contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

h. CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

3. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- a. "AGENT" shall mean the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- b. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- c. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means

SUBCONTRACTOR(s) in any tier.

4. ACCESS TO DATA

In compliance with RCW 39.29.080, the CONTRACTOR shall provide access to data generated under this Contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions and recommendations of the CONTRACTOR'S reports, including computer models and methodology for those models.

5. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by DEL.

a. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

b. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of DEL.

7. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The CONTRACTOR shall not use or disclose any information concerning DEL, or information that may be classified as confidential, for any purpose not directly

connected with the administration of this Contract, except with prior written consent of DEL, or as may be required by law.

9. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, DEL may, in its sole discretion, by written notice to the CONTRACTOR terminate this Contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this Contract.

In the event this Contract is terminated as provided above, DEL shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the Contract by the CONTRACTOR. The rights and remedies of DEL provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

10. COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by DEL. DEL shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to DEL effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the contract, CONTRACTOR hereby grants to DEL a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to DEL.

The CONTRACTOR shall exert all reasonable effort to advise DEL, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract.

DEL shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this Contract. DEL shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

11. COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

DEL shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

12. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

13. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

- a. The request for a dispute hearing must:
- b. Be in writing;
- c. State the disputed issue(s);
- d. State the relative positions of the parties;
- e. State the CONTRACTOR'S name, address, and contract number; and
- f. Be mailed to the AGENT and the other party's (respondent's) contract manager within three (3) working calendar days after the parties agree that they cannot resolve the dispute.
- g. The respondent shall send a written answer to the requester's statement to both the agent and the requester within five (5) working calendar days.
- h. The AGENT shall review the written statements and reply in writing to both parties within ten (10) working calendar days. The AGENT may extend this period if necessary by notifying the parties.

- i. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

14. DUPLICATE PAYMENT

DEL shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the state of Washington or any other party under any other Contract or agreement, for the same services or expenses.

15. GOVERNING LAW

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

16. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless state, agencies of state and all officials, agents and employees of state, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract.

"Claim," as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting there from. CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend and hold harmless the state for any claim arising out of or incident to CONTRACTOR'S or any SUBCONTRACTOR'S performance or failure to perform the Contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the state shall not be eliminated or reduced by any actual or alleged concurrent negligence of state or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officials, agents or employees.

17. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The CONTRACTOR and his or her employees or agents performing under this Contract are not employees or agents of DEL. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the DEL or of the state of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

18. INDUSTRIAL INSURANCE COVERAGE

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. DEL may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by DEL under this contract, and transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services. This provision does not waive any of L&I's right to collect from the CONTRACTOR.

19. LICENSING, ACCREDITATION AND REGISTRATION

The CONTRACTOR shall comply with all applicable local, state and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract.

20. LIMITATION OF AUTHORITY

Only DEL or DEL'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the AGENT.

21. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with DEL. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

22. NONDISCRIMINATION

During the performance of this Contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies.

23. PRIVACY

Personal information including, but not limited to, "Protected Health Information", collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEL or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless DEL for any damages related to the CONTRACTOR'S unauthorized use of personal information.

24. PUBLICITY

The CONTRACTOR agrees to submit to DEL all advertising and publicity matters relating to this Contract wherein DEL'S name is mentioned or language used from which the connection of DEL'S name may, in DEL'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of DEL.

25. RECORDS MAINTENANCE

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

CONTRACTOR shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by DEL, personnel duly authorized by DEL, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

26. REGISTRATION WITH DEPARTMENT OF REVENUE

The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

27. RIGHT OF INSPECTION

The CONTRACTOR shall provide right of access to its facilities to DEL, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

28. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, DEL may terminate the Contract under the "Termination for Convenience" clause, without the ten (10) day notice requirement, subject to renegotiation at DEL'S discretion under those new funding limitations and conditions.

29. SEVERABILITY

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

30. SITE SECURITY

While on DEL premises, CONTRACTOR, its agents, employees or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

31. SUBCONTRACTING

Neither the CONTRACTOR nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of DEL. In no event shall the existence of the subcontract operate to release or reduce the liability of the CONTRACTOR to DEL for any breach in the performance of the CONTRACTOR'S duties. This clause does not include contracts of employment between the CONTRACTOR and personnel assigned to work under this Contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of DEL or as provided by law.

32. TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

33. TERMINATION FOR CAUSE

In the event DEL determines the CONTRACTOR has failed to comply with the conditions of this Contract in a timely manner, DEL has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the DEL shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, the Contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

DEL reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by DEL to terminate the Contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of DEL provided in this Contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

34. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, DEL may, by ten (10) calendar days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, DEL shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

35. TERMINATION PROCEDURES

Upon termination of this Contract, DEL, in addition to any other rights provided in this Contract, may require the CONTRACTOR to deliver to DEL any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

DEL shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by DEL, and the amount agreed upon by the CONTRACTOR and DEL for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services

that are accepted by DEL, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of DEL. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract.

DEL may withhold from any amounts due the CONTRACTOR such sum as DEL determines to be necessary to protect DEL against potential loss or liability. The rights and remedies of DEL provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the CONTRACTOR shall:

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- c. Assign to DEL, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case DEL has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and SUBCONTRACTS;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to DEL and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the Contract had been completed, would have been required to be furnished to DEL;
- f. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
- g. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the CONTRACTOR and in which DEL has or may acquire an interest.

36. TREATMENT OF ASSETS

- a. Title to all property furnished by DEL shall remain in DEL. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in DEL upon delivery of such property by the CONTRACTOR. Title to

other property, the cost of which is reimbursable to the CONTRACTOR under this Contract, shall pass to and vest in DEL upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by DEL in whole or in part, whichever first occurs.

- b. Any property of DEL furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by DEL, be used only for the performance of this Contract.
- c. The CONTRACTOR shall be responsible for any loss or damage to property of DEL that results from the negligence of the CONTRACTOR or that results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- d. If any DEL property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify DEL and shall take all reasonable steps to protect the property from further damage.
- e. The CONTRACTOR shall surrender to DEL all property of DEL prior to settlement upon completion, termination or cancellation of this Contract.
- f. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or subcontractors.

37. WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of DEL.